

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

03-1343

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on \_\_\_\_\_

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Typed or printed name \_\_\_\_\_

Application Number

10/701,332

Filed

November 4, 2003

First Named Inventor

Ghasi R. Agrawal

Art Unit

2117

Examiner

Steve N. Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

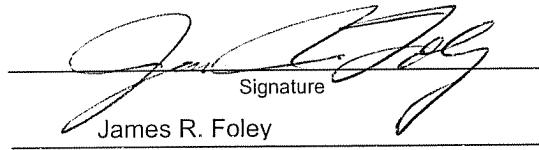
I am the

applicant/inventor.

assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record. 39,979  
Registration number \_\_\_\_\_

attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



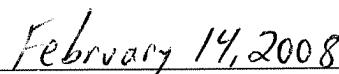
Signature

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Telephone number



Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.



\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U S C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U S Patent and Trademark Office, U S Department of Commerce, P O Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

## REASONS FOR REVIEW

At the time of the filing of the Notice of Appeal concurrently with this Pre-Appeal Brief Request for Review, claims 15-26 are present in the application.

The following rejection was made in the last Office Action:

- a. Claims 15-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,841,709 (McClure) in view of United States Patent No. 6,999,357 (Tanishima).

Applicant respectfully submits that the rejection of claims 15-26 should be withdrawn for the reasons stated in pages 5-7 of Applicant's Response to the Office Action Mailed May 15, 2007 which was filed with the United States Patent Office on August 14, 2007, as well as for the reasons stated herein.

In rejecting the claims, the Examiner pointed out that McClure does not disclose adding access to additional redundant memory which is not required for the repair, and after re-testing the functional memory and adding access to additional redundant memory, testing the additional redundant memory, but asserts that this is disclosed by Tanishima and that it would have been obvious to modify McClure, using Tanishima, to arrive at the present invention.

Independent claim 15 specifically claims that the step of adding access to additional redundant memory which is not required for the repair occurs **after repairing the functional memory by adding access to redundant elements and after re-testing the functional memory which has been repaired**, and the step of testing the additional redundant memory which has been added which was not required for the repair occurs **after repairing and re-testing the functional memory and adding access to the additional redundant memory which has been added which was not required for the repair**. Claim 21 has been similarly amended but is directed to a mode for testing memory.

Not only does McClure not disclose or suggest providing this, but Tanishima also does not disclose or suggest providing what is now being claimed in claims 15 and 21. While Tanishima teaches, at col. 6, lines 33-36, “to replace the failed memory cell array with the redundant memory cell array” and to thereafter perform tests, the redundant memory cell array is required for the repair.

At col. 8, lines 5-8, Tanishima teaches the ability “to perform the testing of the redundant cell array during the testing step without actual replacement with the redundant memory cell array.” As such, the redundant memory cell array is required for the repair, it just may not be used in the end. In Tanishima, this testing is performed before making the repair. Tanishima does not teach adding access to additional redundant memory cell arrays after the functional memory is already repaired and re-tested. In Tanishima, the functional memory is not tested, repaired and re-tested before adding access to additional redundant memory, where the additional redundant memory is not required for the repair.

Applicant submits that what is being claimed in claims 15 and 21 is neither disclosed nor suggested by the cited references, and Applicant respectfully submits that claims 15 and 21, and those claims which depend therefrom, are allowable.

In the most recent Office Action, the Examiner cites McClure and Tanishima, asserts that “the only difference is that the method of Tanishima is not performed after that of McClure”, and cites KSR in rejecting the claims based on obviousness. Applicant respectfully asserts that the differences between the present invention and that which is disclosed in McClure and Tanishima is not merely the order of the steps. The methods are completely different from each other. In McClure and Tanishima, once the functional memory is repaired, there is no adding of access to additional redundant memory, and there is no testing of this additional redundant memory which has been added. Neither McClure nor Tanishima suggest performing the method as claimed. Applicant respectfully submits that the motivation cited by the Examiner is not legally sufficient and does not

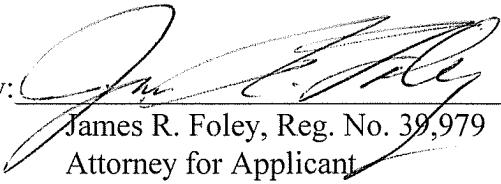
support an obviousness rejection. Additionally, even if the references are combinable as suggested by the Examiner, one does not arrive at the present invention as claimed. Applicant respectfully submits that the Examiner is overly aggressively applying KSR, is over simplifying the invention, and is engaging in hindsight. As early as 1891, the United States Supreme Court held that:

Knowledge after the event is always easy, and problems once solved present no difficulties, indeed, may be represented as never having had any, and expert witnesses may be brought forward to show that the new thing which seemed to have eluded the search of the world was always ready at hand and easy to be seen by a merely skillful attention. But the law has other tests of the invention than subtle conjectures of what might have been seen and yet was not. It regards a change as evidence of novelty, the acceptance and utility of change as further evidence, even as demonstration . . . Nor does it detract from its merit that it is the result of experiment and not the instant and perfect product of inventive power. A patentee may be baldly empirical, seeing nothing beyond his experiments and the result; yet if he has added a new and valuable article to the world's utilities, he is entitled to the rank and protection of an inventor . . . It is certainly not necessary that he understand or be able to state the scientific principles underlying his invention, and it is immaterial whether he can stand a successful examination as to the speculative ideas involved.

Diamond Rubber Co. v. Consolidated Rubber Tile Co., 220 U.S. 428 , 435-36.

Respectfully submitted,

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By: 

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